



2. If so, is claimant's present disability and need for medical treatment related to the January 26, 1998, accident?

#### **FINDINGS OF FACT**

After reviewing the record compiled to date, the Board finds:

1. On January 26, 1998, some wooden pallets fell from a stack and struck Mr. Gomez's right knee cap. The accident occurred while Mr. Gomez was working for National Beef.
2. Mr. Gomez immediately sought medical treatment for his knee. The company authorized orthopedic surgeon Guillermo Garcia, M.D., to treat Mr. Gomez.
3. Approximately five years before this accident, Mr. Gomez injured his right knee and had arthroscopic surgery. But his testimony is uncontroverted that the symptoms from that injury had resolved and that he had neither pain nor discomfort in his knee when he began working for National Beef in October 1997.
4. Before beginning to work for National Beef, Mr. Gomez passed the physical examination provided by the company-selected physician, Dr. Garcia. Dr. Garcia's notes from October 1997 indicate that Mr. Gomez was "absolutely asymptomatic".
5. After considering Mr. Gomez's testimony that his symptoms have not subsided since the January 1998 accident and the various medical opinions and diagnoses provided, the Judge found that Mr. Gomez's present knee complaints were related to the January 1998 work-related accident. At this stage of the proceeding, the Appeals Board adopts that finding. That finding is consistent with the opinions expressed by orthopedic surgeon Bernard T. Poole, M.D., who found that Mr. Gomez has patella femora arthritis that could have been aggravated or exacerbated by the 1998 accident.

#### **CONCLUSIONS OF LAW**

1. The preliminary hearing order should be affirmed.
2. The Appeals Board has the jurisdiction to review a preliminary hearing finding of whether a present disability and need for medical treatment is related to an accident that occurred at work.<sup>1</sup>
3. Both the Judge and the Appeals Board conclude that the January 1998 accident, at the very least, has aggravated a preexisting arthritic condition in Mr. Gomez's right knee.

---

<sup>1</sup> See K.S.A. 1998 Supp. 44-534a.

4. An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>2</sup> The test is not whether the accident causes the condition, but whether the accident aggravates, accelerates, or intensifies the condition.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the February 19, 1999 preliminary hearing order entered by Administrative Law Judge Pamela J. Fuller.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1999.

---

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS  
D. Shane Bangerter, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director

---

<sup>2</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>3</sup> Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).